IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 28TH FEBRUARY 2007 / 9TH PHALGUNA 1928

WP(C).No. 11013 of 2006(J)

PETITIONER:

K.K.SARALAMMA,
SECRETARY, ARPOOKARA SERVICE CO-OP. BANK LTD.
NO.1931,
VILLOONNI.P.O, ARPOOKARA, KOTTAYAM.

BY ADV. SRI.GRASHIOUS KURIAKOSE

RESPONDENTS:

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1. STATE OF KERALA,
REP. BY THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF CO-OPERATION, THIURVANANTHAPURAM.

2. THE JOINT REGISTRAR OF CO-OPERATIVE
SOCIETIES,
KOOTTAYAM.

3. ARPOOKARA SERVICE CO-OPERATIVE BANK
LTD. NO.1931, VILLOONNI.P.O,
ARPOOKARA, KOTTAYAM, REP. BY ITS PRESIDENT.

BY ADV. SRI.T.A.SHAJI
GOVERNMENT PLEADER SRI.P.K. RAVIKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF THE G.O.(RT)NO.478/95/CO-OP.DATED 23.11.95 OF THE 1ST RESPONDENT.

EXT.P2; TRUE COPY OF THE RESOLUTION NO.45 DATED 23.2.2004 OF THE MANAGING COMMITTEE OF THE BANK.

EXT.P3: TRUE COPY OF THE LETTER DATED 22.7.2005 ISSUED BY THE 2ND RESPONDENT.

EXT.P4: TRUE COPY OF THE APPEAL PETITION DATED 5.8.05 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXT.P5: TRUE COPY OF THE G.O.(RT)NO.119/2006/CO-OP. DATED 10.3.2006 OF THE 1ST RESPONDENT.

/TRUE COPY/

PA TO JUDGE.

S. SIRI JAGAN, J.

W.P.(C)NO.11013 OF 2006

DATED THIS THE 28th DAY OF FEBRUARY, 2007

JUDGMENT

The petitioner while working as an Accountant in the third respondent- society was put in full additional charge of the Secretary of the Society for the period from 28.8.2000 to 8.11.2003, since during the said period, the regular Secretary was placed under suspension and later dismissed from service. Acting upon the request of the petitioner, the managing committee of the third respondent Co-operative Bank adopted Ext.P2 resolution to grant special allowance to the petitioner at the rate of 20% of the basic pay and dearness allowance. This was objected to by the second respondent -Joint Registrar and the bank was directed to recover the amount of Rs.78,960/- paid as charge allowance to the petitioner. In the appeal filed by the petitioner before the Government, by Ext.P5 order the Government partly allowed the claim of the petitioner for charge allowance for a period beyond three months at the rate of 10% of the basic pay of the minimum of the scale of pay of the post in which additional charge is held and D.A is not allowable for the said amount. Exts.P3 and P5 orders are under challenge in this writ petition to the

extent the same are against the petitioner.

2. I have heard the learned Counsel for the petitioner, the learned Government Pleader and the learned counsel appearing for the third respondent – Society.

3. The third respondent-Society would support the case of the petitioner. The petitioner would also rely on Ext.P1 order of the Government whereby the Government held that the Joint Registrar has no authority to direct the Co-operative Bank to recover the charge allowance received by an employee as there is nothing abnormal and culpable in this charge arrangement.

4. The Co-operative Societies Rules does not provide for giving charge allowance to any employee. However Rule 199 of the Kerala Co-operative Societies Rules provides thus:

> "**199. Travelling allowance and other allowance:**- In respect of travelling allowance and all other allowances other than Dearness Allowance to the employees of Co-operative Societies the provisions of the Kerala Service Rules shall apply."

5. Going by Rule 199, the payment of charge allowance also has to be regulated by the provisions of the Kerala Service Rules. Rule 53 of the Kerala Service Rules provides for payment of charge allowance, when a person holding one post is required to discharge duties of another post, while discharging the duties of the post which he holds regularly. Originally before the amendment of the Rule by G.O.(P)635/02/Fin. Dated 19.10.02 published in the

Kerala Gazette dated 3.12.02, the provision was that such employees would be entitled to special allowance not exceeding 20% which has been reduced to 10% with effect from 3.12.02 by the said amendment. In the above circumstances, I am satisfied that the payment of charge allowance due to the petitioner shall be governed by Rule 53 of KSR before and after amendment. That is to say, upto 2.12.02 she would be entitled to charge allowance as per the unamended provision and from 3.12.02 onwards she would be entitled to charge allowance as per the amended rule.

6. In the above circumstances, I quash Exts.P3 and P5 orders and direct the second respondent to pass appropriate orders regarding grant of charge allowance to the petitioner in accordance with the unamended rule till 2.12.03 and as per the amended rule with effect from 3.12.03. Orders in this regard shall be passed within one month from the date of receipt of a copy of this judgment.

Writ petition is disposed of as above.

S. SIRI JAGAN, JUDGE

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